



Broadcasting Decision CRTC 2006-654

Ottawa, 30 November 2006

High Fidelity HDTV Inc., on behalf of a corporation to be incorporated Across Canada

Application 2006-0376-3

Public Hearing at Québec, Quebec

11 September 2006

BabyHD – Category 2 specialty service

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking.*

The application

1. The Commission received an application by High Fidelity HDTV Inc., on behalf of a corporation to be incorporated (High Fidelity), for a broadcasting licence to operate a national, English-language Category 2¹ high definition (HD) specialty programming undertaking to be known as BabyHD.
2. The applicant proposed to offer an HD programming service that would feature entirely advertising-free programming. The service would offer educational and entertainment programming targeted to infants and toddlers younger than three years of age. Programs would also provide expert advice or information regarding infants and toddlers, targeted to parents and caregivers of infants and toddlers.
3. All of the programming would be drawn from the following categories set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 1 News; 2(a) Analysis and interpretation; 2(b) Long-form documentary; 5(a) Formal education and pre-school; 5(b) Informal education/Recreation and leisure; 7(a) Ongoing drama series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy; 7(g) Other drama; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 9 Variety; 10 Game shows; 11 General entertainment and human interest; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

¹ The Category 2 services are defined in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

4. The applicant proposed that in each year of the licence term, at least 50% of the programming of BabyHD would be broadcast in true HD format (i.e., not up-converted or wide screen standard definition). In addition, by no later than the beginning of the fourth year of the licence term, 100% of the programming of BabyHD would be in true HD format.

Interventions

5. The Commission received several interventions in support of this application and interventions offering general comments, submitted by The Family Channel Inc. (Family) and Rogers Cable Communications Inc. (Rogers).
6. Family is the licensee of the English-language pay television programming undertaking The Family Channel, which provides a national, general interest service targeted to children, youth to age 17, and families of children and youth. Family noted that the Commission's general approach in licensing new Category 2 pay and specialty services has been to establish restrictions to ensure that a new service will not be directly competitive with any existing pay, specialty or Category 1 service. Family noted that, in other approvals of applications for new Category 2 services targeted to children, the Commission has imposed a 15% limitation on the amount of programming that may be drawn from category 7 (Drama and comedy). Family expressed concern that High Fidelity had not proposed any such restriction for BabyHD. According to Family, if the Commission were to approve this application, BabyHD should be subject to a condition of licence requiring that no more than 15% of its programming be drawn from category 7; without such a restriction, BabyHD could be directly competitive with Family Channel.
7. Rogers expressed concern that the Commission could delay consideration of its request to add Baby TV² to the *Lists of Eligible Satellite Services* (the Lists) in order to consider High Fidelity's application for BabyHD. Rogers argued that at the time its request was filed, there was no existing or unlaunched Canadian service that targeted infants and toddlers younger than age three, and that no licensees of any existing Canadian specialty or pay television service intervened to oppose the application. According to Rogers, this "confirms that Baby TV does not compete, either partially or totally, with any licensed Canadian programming service". Rogers also expressed the view that approval of High Fidelity's application should not act as a barrier to approval of Rogers' request to add Baby TV to the Lists, since the application was filed prior to High Fidelity's BabyHD application.

² In *Call for comments on the proposed addition of Baby TV to the eligible lists of satellite services for distribution on a digital basis, and on the removal of German TV*, Broadcasting Public Notice CRTC 2006-38, 30 March 2006, the Commission called for comments on the proposed addition of Baby TV to the eligible lists of satellite services for distribution on a digital basis.

Applicant's reply

8. In response to Family's suggestion that BabyHD should be subject to a condition of licence requiring that no more than 15% of all programming be drawn from Category 7 (Drama and comedy), the applicant indicated that it would accept such a condition if the Commission deemed it necessary.
9. In response to Rogers, High Fidelity argued that there is no legal requirement that precludes the Commission taking the application for BabyHD into account in its consideration of the request to add Baby TV to the Lists. The applicant was of the view that the Commission should take the BabyHD application into consideration in its evaluation of Rogers' request.
10. High Fidelity also argued that, if the Commission approved Rogers' request to add Baby TV to the Lists, it would have a direct impact on plans for the launch of BabyHD. In the applicant's view, the market would not be able to support the introduction of two services focused on the same niche.

Commission's analysis and determinations

11. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a new Category 2 service might have on an existing Category 2 service, it does seek to ensure that newly licensed Category 2 services do not compete directly with any existing pay or specialty television service, including any Category 1 service.
12. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, and Corrected Appendix 2, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1), the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an analog pay, specialty or existing Category 1 service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question.
13. The Commission considers that BabyHD's nature of service as proposed would be overly broad. The Commission is satisfied that it would be appropriate to impose a 15% weekly limit on programs to be drawn from category 7, in order to prevent the proposed service from becoming directly competitive with that of Family Channel's. A **condition of licence** to that effect is set out in the appendix to this decision.
14. With respect to the comments submitted by Rogers, the Commission notes that, in making its determinations on the approval of applications for new Category 2 services, it takes into account only whether a proposed Category 2 service would compete directly with an existing analog or Category 1 pay or specialty service. It does not take into account whether a new Canadian service would be competitive with any non-Canadian service on the Lists, or with any non-Canadian service proposed for addition to the Lists.

15. In light of the above, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by High Fidelity HDTV Inc., on behalf of a corporation to be incorporated, for a broadcasting licence to operate the national, English-language Category 2 high definition, specialty programming undertaking, BabyHD.
16. The licence will expire 31 August 2013, and will be subject to the **conditions** set out in Public Notice 2000-171-1, with the exception of condition number 4 respecting advertising, which is inconsistent with the nature of service proposed by the applicant. The licence will also be subject to the **conditions** set out in the appendix to this decision.

Issuance of the licence

17. A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:
 - an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
 - the applicant has entered into a distribution agreement with at least one licensed distributor; and
 - the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 30 November 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2006-654

Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001, with the exception of condition number 4 respecting advertising.
2. The licensee shall provide a national, English-language Category 2 high definition specialty programming service devoted to advertising-free educational and entertainment programming targeted to infants and toddlers younger than three years of age. Programs will also provide expert advice or information regarding infants and toddlers, targeted to parents and caregivers of infants and toddlers.
3. The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 1 News
 - 2 (a) Analysis and interpretation
(b) Long-form documentary
 - 5 (a) Formal education and pre-school
(b) Informal education/Recreation and leisure
 - 7 Drama and comedy
 - (a) Ongoing drama series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 8 (a) Music and dance other than music video programs or clips
(b) Music video clips
(c) Music video programs
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos

4. Not more than 15% of all programming broadcast during the broadcast week shall be drawn from Category 7.

For the purposes of the conditions of this licence, including condition of licence no.1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission.